

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Andrew Valencia  
Serial No.: 10/695,199  
Filing Date: October 28, 2003  
Examiner: Christine Y. Ng  
Group Art Unit: 2663  
Confirmation No.: 4522  
Title: OPTIMIZING QUEUING OF VOICE PACKET  
FLOWS IN A NETWORK

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed September 14, 2006, Applicant respectfully requests a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notices of July 12, 2005 and January 10, 2006. Pursuant to the Official Gazette Notices, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-6, 9-18, 20, 21, and 26-30 currently stand rejected under 35 U.S.C. §102(b) as being anticipated by Fitzgerald. Claims 22-25 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fitzgerald in view of Hluchy, et al. Claims 7, 8, and 19 have been allowed. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of anticipation. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of September 14, 2006 and the Final Action of June 23, 2006, the Examiner indicates that the Fitzgerald patent states that an encoded packet flow is paused when the network experiences congestion. There is no such statement in the Fitzgerald patent. The portions of the Fitzgerald patent cited by the Examiner at col. 3, lines 25-34, merely state that processing and routing of packets may be delayed based on congestion. There is no mention of the packet flow being paused or a pause being included in the packet flow. The Examiner also incorrectly states that the Fitzgerald patent discloses that the fragmentation of packets is done in response to encoded information including a pause. However, as shown above, the Fitzgerald patent never mentions that a packet flow includes a pause let alone encoded

information including a pause. Moreover, the Fitzgerald patent adjusts fragmentation of packets based on network congestion as determined by the amount of time it takes for a packet to travel between transmitting and receiving gateways. The Fitzgerald patent discloses encoding speech into a certain number of bytes of a packet payload. The number of bytes selected for carrying the encoded speech is determined by the amount of network congestion and not by whether the encoded information includes a pause as provided in the claimed invention. The Fitzgerald patent uses a table containing acceptable packet payload sizes for different end-to-end network delays. (See col. 4, lines 60-65, of the Fitzgerald patent). Even if the Fitzgerald patent had mentioned a pause, a pause is not used by the Fitzgerald patent in determining how to adjust the fragmentation of packets.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of June 23, 2006 to establish a prima facie case of anticipation of the claims in the Application rejected under 35 U.S.C. §102(b). The Examiner has not shown that the Fitzgerald patent teaches each and every limitation of the claimed invention. In fact, the Examiner readily admits that the Fitzgerald patent makes no mention of any pauses in the encoded information. Thus, the Fitzgerald patent has no capability to determine whether encoded information includes a pause as required by the claimed invention. In addition, without the capability of detecting a pause, the Fitzgerald patent provides no disclosure with respect to adjusting fragmentation of packets based on detection of a pause in the encoded information. As a result, the Examiner cannot show that the Fitzgerald patent teaches each and every limitation of the claimed invention. Therefore, Applicant respectfully submits that Claims 1-6, 9-18, 20, 21, and 26-30 are not anticipated by the Fitzgerald patent.

As for Claims 22-25, the Examiner cites the Hluchyj, et al. patent in combination with the Fitzgerald patent. These claims are also patentably distinct from the Fitzgerald patent as discussed above based on their dependency from Claim 21. The Hluchyj, et al. patent does not include any additional disclosure combinable with the Fitzgerald patent that would be material to patentability of these claims. The portions of the Hluchyj, et al. patent cited by the Examiner are directed to the use of a two bit field to store and indicate a congestion level of a most congested link in a path. The congestion level is determined by comparing an average depth of transit queues within a queue group to a set of predetermined thresholds. The Hluchyj, et al. patent makes no mention of a pause, a pause in a packet flow, or a pause in encoded information of a packet flow. Therefore, the Hluchyj, et al. patent, either alone or in combination, is insufficient to support a rejection of the claims.

CONCLUSION

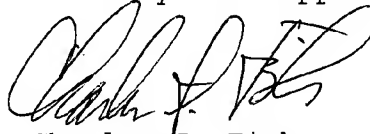
Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in black ink, appearing to read 'Charles S. Fish', is written over the printed name.

Charles S. Fish

Reg. No. 35,870

September 22, 2006

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